

Current Issues in Evictions

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Evictions

- Not a substitute for a class on evictions in general
- See:
- <https://azbar.inreachce.com/Details/Information/198463d0-5598-48c8-97dc-240bde2b00e8>
- See also the LJM; Benchbooks; and attached checklists

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Residential Evictions

- Arizona Residential Landlord Tenant Act
- ARS §33-1304 through 33-1381
- General Evictions:
- Forcible Entry and Detainer
- ARS §12-1171 through 12-1183

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Residential Evictions

- Mobile Home Park Act (ARS§33-1401 through 33-1418)
- Landlord owns the land, Tenant owns the home.
- Recreational Vehicle Long-Term Rental Space Act (ARS§33-2101 through 33-2148)
- In an RV Park and rental agreement longer than 180 days

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Public Housing

- The U.S. Department of Housing and Urban Development (HUD) administers Federal aid to local housing agencies (HAs) that manage the housing for low-income residents at rents they can afford. The housing authority owns the public housing building and is the landlord.

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Public Housing

- A.R.S. § 33-1308(7) specifically excludes public housing matters from Arizona Residential Landlord and Tenant Act.
- Notice Procedures, Termination of Tenancy and Evictions set forth in 24 CFR § 966.4

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Subsidized Housing §8

- Subsidized housing is owned and operated by private owners who receive subsidies in exchange for renting to low- and moderate-income people.
- Owners may be individual landlords or for-profit or nonprofit corporations.
- Subsidized housing can be obtained through vouchers. This subsidy stays with the tenant and the voucher may be used anywhere.

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Subsidized Housing §8

- Or it can be multifamily subsidized housing, where the subsidy is given to the owner who provides affordable housing. This subsidy stays with the property.
- Be aware that non-payment of rent should only include tenant's portion
- Government portion of rent is not considered a partial payment
- See the attached chart

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Current Events

- March 18: HUD Moratorium on foreclosures and evictions on units with FHA mortgages for 60 days
- March 24: AZ Governor's Executive Order 2020-14 suspending evictions for 120 days for Covid-qualifying situations
- March 27: CARES ACT
- Moratorium on evictions on properties with federally backed mortgages or federal subsidies for 120 days (15 USC § 9028)

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Current Events

- May 20: Supreme Court AO 2020-79 (Authorizing Limitation of Court Operations)
- No automatic change of judge through EOY!
- July 7: Supreme Court AO 2020-105 (Disposition of Residential Eviction Cases)
- Includes provisions on pleadings; case calendaring; hearings; amendment of judgments and enforcement of writs; excluded time calculation; and judicial officer training

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MCJC Best Practices

- March 26: Implementation of EO 2020-14
- Amended April 29: Addresses Motions to Compel and Status of the Parties
- 2d Amendment June 24:
- Addresses Expiration of EO and CARES Act
- Find podcasts here:
- <https://anchor.fm/charles-adornetto>



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Expirations

- AO 2020-14: Expires July 22
- CARES Act: Expires July 25
- (May only give 30 day notice for nonpayment of rent after expiration of Act)
- Exclusion of time: Expires October 15

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CARES Act

- Applies to all tenants, not just those affected by COVID-19
- Forebearance for single and multifamily properties with federally backed loans
- Fannie, Freddie, HUD
- And federally assisted housing

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CARES Act

- Eviction moratorium for properties with federally backed loans
- HUD has determined applies only to prevent non-payment of rent evictions
- Must ensure plaintiff verifies property is not protected by CARES Act— **NOW required to be in the Complaint and attested to at the initial appearance**

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EO 2020-14

- For non-payment of rent and other eviction cases excluding material non-compliance and immediate
- **Establishes that Constables temporarily delay enforcement of Eviction Action Orders for *residential premises* if COVID-19 reason exists:**
 - Quarantine due to illness
 - Ordered by doctor to self-quarantine
 - Someone else in the household with COVID-19
 - Health conditions that puts tenant at risk
 - Substantial loss of income (job loss, less income, need to take care of homebound children)
 - Other pertinent circumstances

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EO 2020-14

- Tenant, lessee or resident must:
- Notify landlord in writing
- Attach documentation if any
- Acknowledge terms of lease, including obligation to pay rent, remain in effect
- Landlord cannot interpret COVID-19 as health and safety reason to terminate lease

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EO 2020-14

- "Unless a court determines on motion of the parties that enforcement is necessary in the interest of justice or is in accordance A.R.S. § 33-1368(A), all Arizona Peace Officer Standards and Training Board certified law enforcement officers and any persons subject to the jurisdiction of the Constable Ethics Standards and Training Board, shall temporarily delay enforcement of eviction action orders for residential premises when one of the following circumstances exist and are documented to the landlord or property owner:...."

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EO 2020-14 DOES NOT -

- Prevent the eviction action/hearing/judgment from going forward in non-payment of rent cases.
 - Apply to eviction complaints filed pursuant to A.R.S. 33-1368 A
 - Material or irreparable breach
 - Non-compliance with rental agreement after notice and failure to cure
- (Note: In some cases an argument can be made that the non-compliance cannot be cured due to COVID circumstances
e.g. An infected or exposed unauthorized guest or person residing there

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EO 2020-14

- Constable goes to execute writ
- Tenant informs constable they have a COVID reason to delay enforcement
- Constable should allow tenant time to notify landlord in writing if they have not done so
- Constable does not execute the writ
- Landlord must file motion to compel execution of the writ if they believe tenant's reason is insufficient or it is in the interest of justice

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HOW LONG MUST THE STAY REMAIN IN EFFECT?

- AO 2020-105
- Until a Motion to Compel is granted by the court
- The court shall determine whether to grant the motion using the procedure provided in Rule 14(b)(2) of the Rules of Procedure for Eviction Actions.
- An order granting the motion shall not permit enforcement of the writ until five days after the order is issued.

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EO 2020-14

- Creates unprecedented question regarding status of the parties
- MCJC BP solution:
- Lease "continues" until tenant returns key or writ is executed
- One amended judgment to reflect correct amount of rent due
- AO 2020-105 Permits amended judgment with writ to follow after 5 days

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Evictions after protections expire:
3 situations to plan for

- (1) New eviction cases that were not filed because of the pandemic or precluded by the CARES Act;
- (2) Cases where Landlords obtained judgments but did not obtain writs; and
- (3) Cases with judgments and writs but enforcement of the writ was delayed.

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Evictions after protections expire:
1 New eviction filings

- Delayed by pandemic only:
- **Business as usual—except AO 2020-105 requires attestation in Complaint and at hearing that CARES Act has been complied with**
- Ensure not over \$10,000, exclusive of costs, interest and attorneys' fees
- Plaintiffs may waive amounts over \$10,000 to stay in jurisdiction

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Evictions after protections expire:
1 New eviction filings

- Delayed by CARES Act:
- **AO 2020-105 requires attestation in Complaint and at hearing that CARES Act has been complied with**
- Non-payment of rent requires 30 day notice served AFTER expiration of the Act
- No late fees or other penalties relating to nonpayment of rent

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Evictions after protections expire:
2 Judgments without writs and
3 Judgments with delayed writs

- “45 day rule” actually means explanation is required if writ request is more than 45 days after the judgment per RPEA Rule 14(b)(2)
- AO 2020-105 requires a Motion to Compel to enforce the writ
- Hold hearing so that tenant has notice writ may be executed and to amend judgment

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Evictions after protections expire:
Amended judgments

- AO 2020-105 allows landlords to file motions to amend eviction judgments
- Avoids tenants from having some type of second judgment
- Necessary because tenancy continued even though eviction judgment was signed

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Evictions after protections expire:
Single court hearing

- (Motion to compel and amend judgment)
- Resolve all accrued rent through an amended judgment
- Set meaningful writ date (AO 2020-105 requires 5 days after an amended judgment)
- Inform tenant of both

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AO2020-105

- I. Complaints:
- For any complaint seeking eviction for non-payment of rent for any part of the period of time from March 27, 2020 through July 25, 2020, or any later expiration of the CARES Act, the plaintiff **shall attest** in the complaint or by other written means that the property in which the tenant resides is not covered under the CARES Act.

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AO2020-105

- II. Case Calendaring:
- A court **should not** schedule more than 25 eviction cases in an hour period on the court's calendar.
- All cases **shall** be set for a specific time slot, e.g., 9:00 A.M. – 10:00 AM.
- When feasible, courts should schedule residential eviction actions within the timeframes established by the Rules of Procedure for Eviction Actions and by applicable Arizona statutes.

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AO2020-105

- III. Hearings:
- 1. Parties, attorneys and witnesses may appear remotely
- 2. Judges shall liberally grant continuances and make accommodations for Covid
- 3. At initial hearing, plaintiff or attorney shall attest on record that plaintiff has complied with all requirements of applicable eviction statutes and Supreme Court rules
- 4. Parties may agree to a Consent Agreement with a conditional dismissal (see attached Form)

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AO2020-105

- IV. Enforcing Writs and Amended Judgments:
- On motion of the plaintiff, for good cause the court may order amendment of an eviction judgment in a case in which enforcement of the writ of restitution was delayed due to Executive Order 2020-14. If the judgment is amended, the existing writ shall be quashed and a new writ of restitution shall not be issued until five calendar days after the amended judgment is signed.
- Enforcement of a writ of restitution that has been delayed by Executive Order 2020-14 shall not proceed until the court grants a motion to compel enforcement of the writ filed by the plaintiff. The court shall determine whether to grant the motion using the procedure provided in Rule 14(b)(2) of the Rules of Procedure for Eviction Actions. An order granting the motion shall not permit enforcement of the writ until five days after the order is issued.

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AO2020-105

- V. Excluded time:
- The period of March 18, 2020 through October 15, 2020 is excluded from calculation of time under rule provisions and statutory procedures that require court proceedings to be held within a specific period of time, including the Rules of Procedure for Eviction Actions.
- VI. Training
- This training is mandatory for all judicial officers, including judges pro tempore, who hear eviction cases shall complete this program as soon as possible, but not later than July 22, 2020.

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